

**TIVERTON PLANNING BOARD  
MINUTES OF MEETING  
November 17, 2008**

Chair Stephen Hughes called the regular meeting of the Tiverton Planning Board to order at 7:08 P.M. at the Town Hall, 343 Highland Road. Members present were: Ms. Cote, Ms. Sylvester, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks (arrived at 7:20 P.M.). Also in attendance were the Board's legal counsel Peter D. Ruggiero, Town Planner and Administrative Officer Christopher Spencer, Deirdre Paiva of Commonwealth Engineers and Consultants, the Board's consulting engineer and Director of Public Works Stephen Berlucchi.

Mr. Moniz made a motion to take Agenda Item 11 A. (Tiverton Land Trust – Proposed Educational Building at Pardon Gray) out of order. Mr. DiMauro seconded the motion. The motion passed 5-0-2. Ms. Sylvester, Mr. Hughes, Mr. Hardy, Mr. DiMauro and Mr. McDonald voted in favor. Ms. Cote and Mr. Moniz abstained. Mr. Marks did not vote, since he had not arrived at the meeting yet. See Item 11.a. below for discussion.

**1. Joseph Bossom (Owner) – Church Community Housing (Applicant) – c/o Stephen Ostiguy – 50 Washington Square – Newport, RI 02840 – Major Land Development / Comprehensive Permit – Preliminary Plan Review – Public Hearing Cont. – E/S & W/S Cornell Road, S/S Bulgarmarsh Road, W/S Crandall Road (GC, R-60 & R-80 Zones) – Sandy Woods Farm (Mixed Use) (TC – 12/11/08)** Attorney Stephen Haire, representing Church Community Housing, engineer William Smith of Civil Engineering Concepts, attorney Raymond Holland, representing Mr. Bossom, and Executive Director of Church Community Housing Stephen Ostiguy were present on behalf of the petition. Ms. Sylvester recused herself due to her involvement in the Tiverton Land Trust and left the table. Mr. Smith distributed revised plan sheets.

Mr. Haire stated that an Ad-hoc Technical Review Committee Meeting was held on October 31<sup>st</sup> (See file for notes prepared by Ms. Paiva). He stated that the final plan application had already been filed, in order to meet the deadline for the December meeting. The final plan application included additional and updated information.

Mr. Smith noted that Mr. Spencer had suggested bringing the revised plan sheets to the meeting. One sheet was a traffic information plan, depicting the types and uses of the units; as well as striping, crosswalks, streetlights, traffic controls and street names. Mr. Smith stated that the street names had been submitted to Fire Chief Lloyd for his approval. He noted that there was now a roundabout with an island proposed at the end of Roosevelt Avenue and at the end of Cornell Road. This was proposed to alleviate the DPW's concerns about turning around the snowplows at the end of the public roadways.

Mr. Smith stated that he had received a telephone call from the NTFD (North Tiverton Fire District) about a week ago. NTFD had indicated that, although they had previously issued a letter of approval, they would not be able to provide adequate water pressure for fire protection purposes. Therefore, a booster pump station had been proposed to provide adequate pressure. Mr. Smith stated that the water volume was adequate, and that a letter would be obtained from NTFD.

A three-sheet landscape plan for the commercial area was submitted, including planting details for the roundabout. Mr. Smith stated that the drainage calculations had been updated based on comments received and he would be meeting with RIDEM (Rhode Island Department of Environmental Management) later that week. He stated that he expected State approvals to be forthcoming.

Mr. Haire stated that he had submitted a street abandonment request to the Town Council, which had not appeared on their last agenda. He noted that he had been in contact with Town Solicitor Andrew Teitz. Mr. Haire stated that he was hoping to get on the Town Council's next agenda to authorize advertising for a public hearing either at the second meeting in December or the first meeting in January. He noted that all roads requested for abandonment had no other direct abutters except for Mr. Bossom, and that Mr. Teitz did not

anticipate any issues. Mr. Haire stated that he had also drafted a letter to the Town Council regarding the request for stop signs, which would be submitted after Final Plan.

Mr. Haire stated that he had submitted a revised waiver schedule, which was less lengthy than originally proposed due to the change from public roads to private roads. He stated that there would be no construction prior to Final Plan Approval.

Mr. Berlucchi asked if the proposed booster pump would be electric. Mr. Smith replied in the affirmative, noting that an emergency generator was proposed. He stated that the design specifications were depicted in the Final Plan, but still needed some revision. Ms. Paiva stated that she had not reviewed the design.

Mr. Moniz asked if an easement to NTFD would be required. Mr. Smith replied that the pump would be within the utility easement, which would grant access to NTFD and the Town. Mr. Haire noted that he had drafted preliminary legal documents and had submitted them to Mr. Ruggiero for review.

Mr. Moniz asked if the entire parcel *was depicted on the plans*, including the west side of Cornell Road. Mr. Haire stated that the entire parcel was depicted on the Final Plan and on the cover sheet. He noted that Lot 20, on the west side of Cornell Road, would contain no development except for a 200' x 200' site reserved for a wind generator. Adding that the entire site had been part of the Master Plan submission. Mr. Ostiguy noted that Lot 20 had been used in the calculations. Mr. Ruggiero stated that the Lot should be accounted for in the legal documents.

Mr. Moniz inquired about the lot fronting on Bulgarmarsh Road, asking if it had been sold to the library. Mr. Haire replied in the affirmative. Mr. Ostiguy noted that that had always been their intention. Mr. Moniz asked if that was determined to be a separate lot of record. Mr. Holland stated that the closing had been held last week, and that it was a lot of record depicted on a recorded plan from 1965. He stated that it was part of the plan creating the recreation area, but had never been assigned a new parcel ID number by the Tax Assessor. Mr. Moniz stated that he had reviewed the tax record and that taxes had only been paid on a single lot. He asked if the library lot was part of the Sandy Woods Farm Subdivision. Mr. Ostiguy replied that it was presented as part of the subdivision, with the intent of working with the library. Mr. Moniz stated that the acreage should be subtracted out. Mr. Ostiguy replied that the land would not be developed. Mr. Haire stated that they had been asked by the Town to make the land available for the library. Mr. Moniz opined that recalculating the acreage would reduce the number of allowable units for Sandy Woods Farm. Mr. Haire replied that they could request more units based on the affordable component of the proposal. Mr. Ostiguy stated that under the Comprehensive Permit process, they could request the number of units required to make the project feasible. He added that this had all been discussed at Master Plan.

Mr. Moniz opined that the site would be overdeveloped and that he would be asking for a reduction in the number of units. Mr. Haire asked for the basis of Mr. Moniz's assertion, opining that they could be allowed significantly more units than what was proposed.

Mr. Moniz stated that the mixed-use units should be listed as "commercial" and asked if the kiln and shed would be located within the Land Trust area. Mr. Ostiguy replied in the affirmative. Mr. Moniz opined that these structures should be listed as commercial property. Mr. Ostiguy distributed a handout from the Ad-hoc Technical Review Committee (TRC) meeting listing the proposed uses. Mr. Haire noted that the kiln was existing. Mr. Ostiguy stated that the kiln would be demolished, which was confirmed by Mr. Bossom from the audience. Discussion ensued regarding educational uses and the studio space.

Mr. Moniz expressed his concern regarding the safety of Roosevelt Avenue. He stated that he would like to see the crosswalk set back thirty (30) feet from the intersection due to his concern for the safety of pedestrians crossing the street. Mr. Smith stated that a crosswalk was not proposed at the corner, but was in the area of the entrance to the library site. He stated that a sight triangle and construction entrance was depicted at the corner,

but no crosswalk. Mr. Spencer noted that vehicles would slow down when making the turn on to Roosevelt Avenue, adding that the Town does not move crosswalks out of intersections anywhere else in Town.

Mr. Moniz opined that there should be a right turn lane from Roosevelt Avenue onto Bulgarmarsh Road, and that the entrances to the library and recreation area should not be aligned. Mr. Smith replied that the entrances were aligned intentionally, in order to control the traffic. Mr. Haire noted that this plan would not control development on either the library or recreation area lots, but was merely a depiction of what could be done.

Mr. Moniz inquired about the process of improving an unimproved town road. Mr. Haire replied that a bond (surety) would be required. Mr. Ruggiero noted that the Town Council would request an advisory opinion from the Planning Board regarding the abandonment request. Mr. Haire stated that the applicant would appreciate the Board's support.

Mr. Ruggiero asked if the Board members would like copies of the draft legal documents. They replied in the affirmative.

Mr. Moniz asked why the total buildout of the property was depicted on the plans. Mr. Smith replied that the maximum buildout was needed for runoff calculations and storm water management design. Mr. Moniz asked if Church Community Housing would maintain the swales on Roosevelt Avenue. Mr. Haire replied that this issue would be handled in the legal documents, and that the applicant would construct the swales. He stated that the homeowner's association and the library would be responsible for some of the swales' maintenance. Mr. Moniz stated that he would not want to see the Town held liable.

The Chair noted that this was still a public hearing and invited questions or comments from the audience. Hearing none, Mr. Hardy made a motion to support the petitioner's request for street abandonment for the following platted, undeveloped streets:

- Approximately half of the width (54' of the 132' current total width) of the Cornell Road right of way from the south side of Kennedy Drive to the north side of Ash Street, totaling 68,801 square feet,
- Eisenhower Drive in its entirety, totaling 23,659 square feet,
- The portion of Presidential Drive located south of Kennedy Drive, totaling 38,136 square feet, and
- The portion of Kennedy Drive located west of Presidential Drive, totaling 28,896 square feet.

Mr. Marks seconded the motion. The motion passed unanimously. Ms. Cote, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Mr. Haire noted that the fifteen residential lots, which appeared on an approved plat but did not appear on the Tax Assessor's maps, would be abandoned.

Ms. Paiva noted that she would need to review some of the drainage, suggesting that this could be a condition of Preliminary Plan Approval. Mr. Ruggiero noted that the Final Plan would come to the Planning Board for review and approval. Mr. Moniz inquired about RIDEM (Rhode Island Department of Environmental Management) status. Mr. Haire replied that Mr. Smith would meet with RIDEM that week to review their comments. Mr. Smith stated that he would also meet with RIDOT (Rhode Island Department of Transportation) to review some minor issues.

Mr. Moniz requested a plan for the open area in the center of the proposed roundabout at Indian Grass Circle. Mr. Smith replied that there would be nothing built in that area.

The Chair inquired about sureties, both for the public improvements and for the maintenance and inspections. Mr. Ostiguy replied that they would provide an estimate based on discussions with Commonwealth and the DPW.

The Chair reviewed the [Comprehensive Permit] Required Findings aloud; Zoning Ordinance - Article XXII Section 7.b. (1-6). Mr. Marks made a motion to make positive findings. Mr. Hardy seconded the motion. Mr.

Moniz stated that he had a problem with Finding No. 2 and that he thought that there should be a reduction in the number of units proposed. Mr. Ostiguy replied that they could have proposed more total units and less affordable units under the provisions of the law. Mr. Moniz stated that there was a lot of commercial space proposed as well. The motion passed 6-1. Mr. Hughes, Ms. Cote, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Mr. Moniz was opposed.

Mr. Marks made a motion to grant Conditional Preliminary Plan Approval, with the conditions being:

- RIDEM (Rhode Island Department of Environmental Management) approval,
- RIDOT (Rhode Island Department of Transportation) approval,
- Commonwealth's final approval,
- Street abandonment approval by the Town Council,
- Approval of the Fire Chief, (for hydrant locations, fire flow requirements and roadway widths)
- Approval of the Police Chief, (for street light number and location and public safety signage)
- No work shall be done prior to Final Plan Approval, and
- Surety must be set and posted.

Mr. Hardy seconded the motion. The motion passed 6-0-1. Mr. Hughes, Ms. Cote, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Mr. Moniz abstained, citing his negative findings vote.

The Chair stated that another ad-hoc technical review meeting should be scheduled prior to Final Plan and noted that the Board would need to set a Special Meeting date for Final Plan Review, since the Town Council would not approve the street abandonments until December 22<sup>nd</sup> at the earliest. It was agreed that a date would be set based on the Town Council's schedule.

**2. David Brothers Realty, LLC (Owner) – GB New England II, LLC (Applicant) – 14 Breakneck Hill Road, Suite 101 – Lincoln, RI 02865 – Major Land Development (No Road Required; Drive-thru Required) – Preliminary Plan Review & Site Plan / Design Plan Review – Public Hearing Continued – E/S Main Road, S/S Briarwood Ave. (Site of Former Grand Central Market & Existing Mixed-Use Building) – Replacement of an Existing Retail Commercial Structure (Supermarket) with a New Retail Building (CVS Pharmacy) (TC – 1/7/09)** Attorney John Bolton, David Morello of GB New England II, LLC and engineer Anthony Moura of Vanasse Hangen Brustlin, Inc. (VHB) were present on behalf of the petition. Mr. Bolton gave a brief history of the application, noting that the first meeting with the Planning Board had been on September 18, 2007. He stated that the current proposed project was better than the original plan and thanked the Board members and their predecessors for their help in the process. He noted that retail projects were disappearing in this economic climate, and that they would like to move forward. Mr. Bolton stated that the applicant's experts were present to answer any questions and the information requested by the Board had been provided, which included:

- Sight distance information,
- Responses to Commonwealth's comments,
- Revised drainage calculations, and
- Information regarding the proposed lighting fixtures.

Mr. Marks asked if construction would begin after Preliminary Plan Approval. Mr. Bolton replied that it would not begin until after Final Plan Approval. The Chair asked if Commonwealth was satisfied. Ms. Paiva replied that her original comments regarding traffic had been on technical issues, and that there was no significant impact on the conclusions of the applicant's report. Engineer Robert J. Clinton of VHB, stated that he had prepared supplemental traffic information, which he distributed to the Board. The Chair asked why the entire traffic report had been reproduced and redistributed even though only one paragraph had been revised. He noted that a letter stating the change would have been sufficient.

Mr. Bolton stated that they had received a RIDOT PAP (Rhode Island Department of Transportation Physical Alteration Permit) pending the posting of a bond. Mr. Bolton distributed copies of correspondence from RIDOT stating that the permit would be issued once the bond was posted.

Mr. Spencer inquired about the improvements to the strip plaza at the front of the site. He noted that the original plan proposed to demolish this building and construct a bank. The plan was changed to preserve the strip plaza. Mr. Spencer had expressed his concern that the plaza would be lost if it was not integrated into the site. The Chair stated that he would like to see the plaza reflect the style of the new CVS building.

Robert Kuhn of BKA Architects displayed photos and renderings of the site and proposed development. He stated that the paint, fit and finish of the plaza would reflect the new building and that there would be gables installed at either end of the plaza building. Mr. Kuhn distributed a supplemental handout regarding the columns of the plaza building, which were aesthetic and not load bearing.

Mr. Spencer distributed photos of the existing plaza building, reflecting renovations completed after a recent fire noting that the roof trusses had been replaced and the roof was raised on an asymmetric portion of building. Mr. Bolton stated that the proposed design improvements could still be completed, it would just cost more. Mr. Kuhn stated that the cupola would be put back up on the roof and the roof sections could be raised to a uniform height. Mr. Bolton stated that more details would be provided at final plan review, and that they would re-address the issue if any major changes were required.

Mr. Spencer asked if the siding would be replaced with shingles as depicted in the renderings. Mr. Bolton replied that clapboard or "Hardiplank" would be used to match the CVS building. Mr. DiMauro asked if gable vents were proposed. Mr. Kuhn replied in the affirmative. A discussion ensued regarding signage and the columns. Mr. Bolton noted that the Town had a very stringent sign ordinance and that they had received the necessary Zoning Board relief adding that they would not want to return to the Zoning Board for further relief.

Mr. Hardy inquired about lighting, noting his concern regarding light pollution and asked how the applicant would minimize their impact. Mr. Bolton replied that a photometric study had been submitted and that there would be no light spillage off of the property. He stated that the fixtures in the parking lot would be shielded down-lights. Mr. Moura added that the lighting would be "dark sky" compliant noting that the light poles would be reduced in height to a maximum of twenty (20) feet, with decorative lighting fixtures.

Mr. Spencer inquired about the lighting on the CVS building, asking if wall packs or a wall wash would be used. Mr. Bolton replied that they would look at the issue and consider the options. Mr. Spencer noted that the Zoning Board had approved the use of halo lighting on the signage and asked if this type of lighting would be used on the monument sign as well. Mr. Bolton replied in the affirmative.

Mr. Hardy inquired about landscaping. Mr. Moura described the numerous proposed plantings (trees, shrubs and perennials). Mr. Hardy noted that the Board had requested a reduction in the number of parking spaces, and asked if there had been a reduction. Mr. Moura replied that fourteen or fifteen spaces had been removed and replaced with landscaping and that the remaining spaces were needed by CVS and the Zoning Ordinance. He noted that the plans depicted two (2) spaces above those required by zoning, since the spaces within the setback could not be counted towards the requirement.

Mr. Spencer asked if there would be ground cover on the islands, preventing mulch from washing into the drainage system. Mr. Moura replied that there would be grass surrounding mulch beds and that the mulch would be contained.

Mr. Berlucchi asked why the one-way [truck] exit on Briarwood Avenue was so wide (24'). He opined that the width was excessive and would add runoff to the already over capacity storm water system on Main Road. Mr. Berlucchi noted that there was a thirty-inch State-owned drain line on Main Road, which fed to a twenty-four-inch Town-owned system. He stated that future development and new construction would cause major

problems in the Robert Gray area, including overloaded septic systems and outflow problems. Mr. Berlucchi also noted that Main Road would be resurfaced (by the State) next April and that no drainage improvements would be allowed for a period of time afterwards. Mr. Moura replied that they had reduced the volume and rate of runoff from the site.

Mr. Moura noted that he would look at reducing the width of the Briarwood Avenue exit-only to twenty-feet. Ms. Paiva suggested that it could be reduced to eighteen-feet, which would give more of a “one-way” appearance. She also noted that the typical cross-section depicted a concrete sidewalk, not asphalt. Mr. Berlucchi noted that the sidewalks might fall within the State’s resurfacing contract. Ms. Paiva suggested that the applicant check with RIDOT. Ms. Paiva noted that the applicant could not mitigate the Main Road drainage issues and they were doing what was required. Mr. Berlucchi agreed, noting that he did not want to see a basin on the site.

Mr. Spencer stated that the Administrative Subdivision to merge the two existing parcels was needed for Final Plan. Mr. Bolton replied that this would typically be the last thing done and suggested that the application could be submitted, with recording held until after Final Plan Approval. He stated that the current owner would not consent until after Final Plan Approval. Mr. Spencer noted that the Administrative Subdivision Approval would be valid for ninety (90) days, suggesting that the Administrative and Final Plan applications could be submitted together.

The Chair opened the public portion of the hearing, inviting questions and comments from the audience. Hearing none, he reviewed aloud the Required Findings of the Land Development and Subdivision Regulations - Section 23-45 a. (1-5). Ms. Sylvester made a motion to make positive findings. Mr. Hardy seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.

Ms. Cote made a motion to grant Conditional Preliminary Plan Approval, with the conditions being:

- Update the detail drawing of the front plaza building,
- Reduce the width of the truck exit on Briarwood Avenue,
- Revise the sidewalk detail to be concrete instead of asphalt, and
- Merge the two existing parcels via an Administrative Subdivision.

Mr. DiMauro seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.

**3. Viking Stone Corporation – c/o Turner Scott, Esq. – 122 Touro Street – Newport, RI 02840 – Soil Erosion Sediment Control Plan Review & Comment – W/S Fish Road, N/S Bulgarmarsh Road – Stone Quarry (TC Waived)** Attorney Turner Scott and engineer William Smith of Civil Engineering Concepts were present on behalf of the petition. Mr. Scott noted that they had appeared before the Board on October 20<sup>th</sup>. Since that meeting, Mr. Smith had met with Commonwealth and Mr. Scott had met with Building / Zoning Official Gareth Eames and Town Solicitor Jeanne Scott. Mr. Scott stated that there was currently no water traveling off of the Viking Stone Corporation (VSC) property to the Fish Road pond, meaning that the water was coming from other sources. He stated that a plan had been presented to maintain all water on site noting that the quarry operations would be limited due to Town regulations, since the quarry was a “grandfathered” use.

Mr. Smith described the plan and design. The Chair stated that he did not remember water collecting along Fish Road in the past and asked why it was collecting now and killing trees in the area. Mr. Smith replied that water discharging from the quarry contained silt and sediment, which clogged off the infiltration and noted that the death of the trees made the situation more obvious. He stated that the applicant would harrow the existing depression, add sand, install wick drains and install an overflow to the culvert to the north of the depression.

The Chair asked if the quarry was to blame for the situation. Mr. Scott replied that the quarry had contributed, adding that previous plans depicting water discharging to the pond had been approved by Tiverton Building Officials and quarry licenses were granted.

Ms. Sylvester asked if the cleared area would be replanted to prevent erosion. Mr. Smith replied in the affirmative, stating that it would be loamed and seeded with trees.

Mr. Berlucchi stated that he had met with Mr. Smith that day and he was very concerned with the Fish Road flooding. He stated that he believed that the design to connect the pond to the existing swale would suffice. The Chair inquired about a time frame for construction. Mr. Berlucchi stated that the proposed plan would add water to the wetlands and would require RIDEM (Rhode Island Department of Environmental Management) approval for the portion of construction to take place on Town property. Mr. Berlucchi stated that Mr. Smith had agreed to provide the RIDEM application materials and the Town would be the applicant. Mr. Berlucchi noted that the work would be performed by VSC and surety would be required. He stated that protection would be needed for the upcoming winter and spring and that VSC would pay for police protection, if required. Mr. Berlucchi opined that this was the best that VSC could do at this time.

Mr. Smith noted that the quarry operations were currently shut down and stated that VSC would like to start work on the upper ponds and would request permission from the Building Official to quarry in order to raise funds for the work. He stated that this was the best they could do until the water table was down. He estimated that they could perform the necessary work within four (4) months of receiving permits. Mr. Ruggiero noted that RIDEM might restrict the work to the dry season.

Mr. Berlucchi stated that DPW would replace the culvert under the road and opined that four (4) months was excessive and that the work should be performed within six (6) weeks of receiving permits, given the proper conditions. He noted that an approved contractor must be used. Mr. Smith noted that East Coast Construction would be used, which was an approved company.

Mr. Moniz inquired about the liability of performing work on Town property. Mr. Berlucchi noted that a permit from DPW would be obtained and that insurance would be required.

Mr. Scott stated that VSC had been allowed (by the Building / Zoning Official) to remove processed materials from the site and to blast and remove earth per: the plan. VSC had also been allowed to process material for use on site. Mr. Scott stated that they would like permission to process material for sale and that they were hoping to receive a temporary license, adding that they would not restart quarrying until the Soil Erosion Sediment Control plan was implemented.

Mr. Moniz inquired about the duration of the surety. Mr. Berlucchi stated that his main concern was with the surety for the pipe from the pond to the culvert (along Fish Road). Mr. Scott stated that the Board could recommend that a bond be required, but that it was ultimately the Building Official's decision.

Mr. Marks made a motion to accept the plan with a positive recommendation to the Building Official, with the following conditions:

- Surety must be set and posted for the installation of pipe to the north of the depression within the Fish Road right of way to the existing culvert,
- The area surrounding existing and proposed ponds must be revegetated, and
- Surety must be set and posted for the implementation of the Soil Erosion and Sediment Control Plan.

Mr. Moniz seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Mr. Ruggiero noted that the surety amount would fall under the purview of the Building Official.

**4. Countryview Estates, LLC – 325 Hurst Lane – Tiverton, RI 02878 – Major Subdivision (Road Required) – Final Plan Review Continued – South of Watuppa Avenue, South of Bullfrog Lane – Watuppa Plantation – 14 Lots on 11.64 +/- acres (TC - 1/31/09)** Attorney Jeremiah Leary was present on behalf of the petition and requested a continuance to the Board's December 2<sup>nd</sup> meeting. Mr. Spencer stated that he had spoken with Wastewater Superintendent John Lincourt, who indicated that the Wastewater Management Commission's Review should be complete by that date. Mr. Leary stated that the petition could be removed from the agenda if it was not ready and extended the time clock to March 31, 2009. The petition was continued to the Board's December 2<sup>nd</sup> meeting.

**5. Countryview Estates, LLC – 325 Hurst Lane – Tiverton, RI 02878 – Annual License Renewal for Manufactured Home Elderly Community (MHECD) – Response Due to Town Council by 11/24/08**

Attorney Jeremiah Leary was present on behalf of the petition. Mr. Berlucchi stated that the applicant had missed their deadline for installation of the first emergency generator for the sewer pump stations. He stated that the first generator was on-site and scheduled for installation the next week. Mr. Berlucchi suggested recommending license approval, conditional upon installation of the two (2) required generators. The generators had been depicted on the original Countryview Estates plans (at the Cardinal Court and Blackbird Court pump stations) but had never been installed. He added that he would recommend calling the \$150,000 surety, if the work was not completed in a timely fashion. The Chair noted that both generators should be installed by December 7<sup>th</sup> in accordance with the agreement between Mr. Leary and Mr. Berlucchi. Mr. Berlucchi replied that it would be impossible to meet that deadline.

Mr. Leary stated that there was currently a generator shortage and that this issue had never been raised before. He suggested that the Town Council could grant a temporary license. He suggested a deadline of December 7<sup>th</sup> for installation of the first generator and December 22<sup>nd</sup> for the second generator. It was noted that the Town Council's second December meeting was scheduled for December 22<sup>nd</sup>. Mr. Berlucchi stated that a generator shortage might make obtaining one more expensive, but not impossible.

Mr. DiMauro made a motion to recommend a license renewal contingent upon the first generator being installed and operational by December 7<sup>th</sup> and the second generator being installed and operational by December 18<sup>th</sup>. This would allow time for the Chair to make a written progress report to the Town Council prior to their scheduled December 22<sup>nd</sup> meeting. Mr. Moniz seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.

**6. Brian Kronsberg – 26 Last Street and Richard & Claire Evans – 36 Last Street – Tiverton, RI 02878 – Administrative Subdivision – Referred by Administrative Officer (Zoning Variance(s) Required) - S/S Last Street – Block 45, Cards 87 & 88 – Adjustment of Common Property Line (TC - 12/19/08)** The Chair stated that this item was continued to the Board's December 2<sup>nd</sup> meeting.

**7. Beech Hill Real Estate, LLC – c/o Eric P. Chappell, Esq. (Agent) – 171 Chase Road, PO Box 8 – Portsmouth, RI 02871 – Extension of Surety & Status – Expiration – December 31, 2008 (\$200,000) Beech Tree Hill Subdivision** No one was present on behalf of this petition. The Chair stated that Manual Laureanno of Beech Hill Real Estate, LLC had telephoned the Office to say that he could not attend to the meeting due to illness nor was his attorney available to attend. The Chair stated that he had received an email from the bank issuing the Letter of Credit (Bank Five) and that he had had a telephone conversation with Robert Collins, Vice President of Bank Five, who indicated that the bank would extend the Letter of Credit for two (2) years.

Ms. Sylvester made a motion to accept a two-year extension of the Letter of Credit to December 31, 2010. Mr. Hardy seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. It was noted that the \$500 extension fee was still outstanding.



**8. Puritan Management, LLC – c/o Jeremiah Leary, Esq. – 1340 Main Road – Tiverton, RI 02878 – Requesting Reduction in Amount of Surety – (\$374,247) – Expiration 2/28/2010 – William Barton Estates Major Subdivision** Attorney Jeremiah Leary and Thomas Costa of Puritan Management, LLC were present on behalf of the petition. The Chair noted that Mr. Berlucchi had recommended a reduction of \$87,840, which would make the new surety amount \$285,407. After a brief discussion, Mr. Hardy made a motion to reduce the surety to \$285,407. Mr. Marks seconded the motion. The motion passed 7-0-1. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Mr. Moniz abstained.

The Chair stated that, in the future, applicants should also request a waiver from the provisions of Land Development and Subdivision Regulations Section 23-74 (a.), which required doubling the amount of surety recommended by the Director of Public Works. The Chair noted that this section of the regulations had not been enforced in the past.

## **9. Planning Board Legal Counsel**

### **A. Bourne Mill Surety – Term and Form**

Jake Upton of EA Fish Associates was present on behalf of the petition. Mr. Ruggiero stated that \$927,000 in cash was currently being held for surety. EA Fish, who had posted the cash, was now trying to post replacement Letters of Credit (four letters of credit in varying amounts totaling \$927,000). He stated that this process would need to be a policy decision by the Board.

Mr. Upton stated that EA Fish Associates had formed a partnership with the developer, Armory Revival Company and now held controlling interest. The Chair noted that construction had been started with no surety in place or inspections or a recorded plan, adding that the Town had issued building permits. The Chair stated that there had also been issues on site associated with the discovery of peat soils beneath the roadways and that inspections were now being performed by the Department of Public Works (off-site) and Commonwealth Engineers (both on-site and off-site).

The Chair noted that Letters of Credit had historically been required for a three (3) year term, but EA Fish was requesting permission to submit multiple Letters of Credit with a one (1) year term and an “evergreen clause” for renewal. This clause would give the Town a thirty (30) day notice, if the bank would not be renewing the surety. EA Fish had indicated that this would be preferable due to the tax credits and banking issues. The Chair opined that thirty (30) days was not very much notice to convert the surety to cash, if needed.

Mr. Upton stated that it might be possible to extend the notice period, noting that the tax credit market was very challenging and that the State had required the Historic Preservation Tax Credit fees to be paid up front (approximately \$1 million) adding that construction was currently being funded out of equity. He stated that they were trying to close financing on the project and were having a difficult time. Mr. Upton noted that Edward Fish (owner of EA Fish Associates) had agreed to purchase the tax credits, as a show of his personal commitment to the project. Mr. Upton stated that the cash returned by the Town would be recycled back into the project.

Mr. Hardy stated that the Board should recognize the difficult economic climate and the importance of the project. Mr. Marks asked how often inspections were being performed. Mr. Berlucchi replied that off-site inspections were continual. On-site, there had been problems with peat soils and water. He stated that Ms. Paiva had been inspecting full-time at the request of the developer, with the cost borne by the developer. Mr. Berlucchi noted that the peat issue would still need to be resolved and could be very costly. Ms. Paiva noted that the surety would cover the cost of off-site improvements and on-site inspections.

Mr. Upton stated that they were trying to cap the work to stabilize the site. They would readdress the situation in the spring. He stated that the site would be quiet over the winter. Mr. Marks asked if the majority of the work would be done prior to the expiration of the surety. Mr. Upton replied that they were hoping to finish in May or June. He stated that if the work was not complete in June, it meant that there was a problem. Mr. Upton

stated that they could schedule reports to the Town and suggested that they could come before the Board in August for an update. He added that they were trying to close financing by the end of the year.

The Chair stated that he was not comfortable with a one (1) year term for the letters of credit and would be more comfortable with a two (2) year term. A discussion ensued regarding paving. Mr. Spencer suggested that the Board could request reports from Commonwealth and Mr. Berlucchi sixty (60) days prior to expiration, so that they would be prepared in the event that the surety was not renewed.

Mr. Moniz made a motion to accept the one (1) year Letters of Credit with the thirty-day (30) notice (“evergreen clause”), with reports from Commonwealth and Mr. Berlucchi sixty (60) days prior to expiration (August 31, 2009). Ms. Sylvester seconded the motion. The motion passed 7-1. Ms. Cote, Ms. Sylvester, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Mr. Hughes was opposed.

Mr. Upton stated that they could try to renegotiate the terms of the Letters of Credit with Bank of America, but that they would like to close on the project first. He stated that they would be happy to share their balance sheet information and that it would be very unlikely that the Letters of Credit would be cancelled. Mr. Spencer stated that he was comfortable with the arrangement. Mr. Upton agreed to submit a copy of an application to Bank of America for an extension of the notice period, once the funding was in place.

Mr. Ruggiero noted that future documents should refer to a “Comprehensive Permit” and not a “Subdivision”.

Mr. Upton noted that Armory Revival Company was not totally out of the project and could return for Phase 3. He stated that Armory had a minority interest in Phases 1 and 2. Mr. Berlucchi asked if the number of rental units would be changed. Mr. Upton replied that the same program would be followed.

**B. Miscellaneous** There was no discussion of this item.

#### **10. Town Planner / Administrative Officer**

**A. Town Planner Items** There was no discussion of this item.

**B. Administrative Officer’s Report** There was no report at this time.

#### **C. Miscellaneous**

1. Ms. Sylvester inquired about the **status of the Comprehensive Community Plan update**. Mr. Spencer stated that he would be delivering the final changes to Statewide Planning that week. Mr. Hardy noted that the Zoning Ordinance and Subdivision Regulations should be revised in accordance with the update, even though it was not yet State-approved. Mr. Spencer suggested a workshop in January. Mr. Moniz noted that fees should also be reviewed.

#### **11. Tiverton Planning Board**

**A. Tiverton Land Trust – Proposed Educational Building at Pardon Gray – Maps 2-5 & 2-6, Block 119, Card 2 – Referred to Planning Board from Zoning Board for Advisory Opinion (Zoning Ordinance Article XV, Section 5)** this item was taken out of order at the beginning of the meeting. The Chair stated that a letter had been received from Building / Zoning Official Gareth Eames, dated that day, ruling that this was a Zoning Board matter and did not fall within the Planning Board’s purview. The Chair asked Mr. Ruggiero for his opinion.

Mr. Ruggiero stated that the Zoning Board had referred this matter to the Planning Board at their meeting of November 5, 2008. He noted that Mr. Eames and Mr. Spencer had disagreed with the Zoning Board’s interpretation of the Zoning Ordinance and stated that the Planning Board was obligated to follow Mr. Eames’ determination, since he was the Zoning Official. The Chair agreed that he did not feel that the issue was a Planning Board matter. Mr. Ruggiero stated that no action by the Planning Board was required and that the item would appear on the next Zoning Board agenda (December 3<sup>rd</sup>). No action was taken.

#### **B. Planning Board Delegates to Various Commissions & Committees**

1. **Stone Bridge Committee (Chair or Designee)** It was agreed that Mr. McDonald would serve on that Committee.
2. **Harbor Commission** It was agreed that Frank DiMauro would serve on that Commission.
3. **Sakonnet Bridge Committee (Chair or Designee)** It was agreed that Peter Moniz would serve on that Committee.

**C. Miscellaneous**

1. **Bourne Mill Status Update** This item was addressed under Agenda Item 9 above.
2. **Meeting Calendar for 2009** Mr. DiMauro made a motion to accept the draft meeting calendar. Mr. Moniz seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.
3. **Draft Budget Request – Fiscal Year 2010** The Chair stated that this item would be addressed at the next meeting. There was no further discussion of this item at this time.

**D. Correspondence** There was no discussion regarding this item.

**E. Approval of Minutes:**

**August 19, 2008 (Special Meeting) (*Agenda incorrectly listed August 18, 2008*)** Mr. Moniz made a motion to approve these minutes. Mr. DiMauro seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.

**September 2, 2008** Ms. Cote made a motion to approve these minutes. Mr. Hughes seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.

**October 4, 2008** Mr. Marks made a motion to approve these minutes. Ms. Sylvester seconded the motion. The motion passed 7-0-1. Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Ms. Cote abstained.

**October 20, 2008 (Special Meeting)** Mr. Marks made a motion to approve these minutes. Mr. Hardy seconded the motion. The motion passed 7-0-1. Ms. Cote, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor. Ms. Sylvester abstained.

**F. Adjournment:** Mr. Hardy made a motion to adjourn. Mr. DiMauro seconded the motion. The motion passed unanimously. Ms. Cote, Ms. Sylvester, Mr. Hughes, Mr. Moniz, Mr. DiMauro, Mr. McDonald, Mr. Hardy and Mr. Marks voted in favor.

The meeting adjourned at 10:52 P.M.

*(Italicized words represent corrections made on the approved date.)*

Submitted by: \_\_\_\_\_  
Kate Michaud

Approval Date: January 6, 2009